No. 5 Original

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1943

THE STATE OF COLORADO, COMPLAINANT,

V.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USER'S ASSOCIATION, A CORPORATION, DEFENDANTS.

MEMORANDUM FOR THE STATE OF NEBRASKA, AMICUS CURIAE.

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In view of the memorandum filed for the United States, amicus curiae by the Solicitor General of the

United States recently, the State of Nebraska desires to have its position known. The memorandum for the United States refers to the case of *Nebraska* v. *Wyoming and Colorado, United States, Intervenor,* No. 7 Original, October Term, 1943. In that case, the State of Nebraska is compainant, the State of Wyoming the original defendant, the State of Colorado, impleaded defendant and the United States is intervenor. The issues in that case have been submitted to the Special Master upon written briefs and oral arguments. At the time of the preparation of this memorandum, he has not yet announced any decision.

The United States, in its intervention, has raised the issue of the claim of ownership by the United States of the unappropriated water of the stream involved, namely, the North Platte River. As finally presented in the briefs filed on behalf of the United States before the Special Master, certain qualifications are made of the claims of the United States. Since these are somewhat complex, it is unnecessary for us to attempt to state our understanding of them at this point. They are not stated in the memorandum filed herein for the United States, and since no one is asking a determination of those issues in this cause, their details are perhaps irrelevant. We believe, however, that the fact of the existence of such qualifications in the federal claims is one which should not be overlooked.

The State of Nebraska has no desire that the issues raised by the petition in intervention of the United States in the case of *Nebraska* v. *Wyoming, et al.,* should now be decided. We hope that we, as counsel for the State of Nebraska, will be given an opportunity to be heard

upon the issue. This opportunity will, of course, be afforded when the case of *Nebraska* v. *Wyoming, et al.*, is finally submitted to this court. It is not, as we understand it, directly raised in the pleadings or the briefs filed in the instant case. If the issue is, in fact, extraneous to the instant controversy, no harm will be done by eliminating it at this time even, though that might require the modification of the master's report as requested by counsel for the United States.

If, however, this court should be of the opinion that the question is necessarily involved and must be decided and settled at this time, we hope that an opportunity will be given to the State of Nebraska to file briefs and participate in any argument of that issue. We would suggest that probably in that event the United States and the State of Wyoming would like the same privilege, and no doubt, the privilege should be accorded to them as well as to us in the event that the court should wish to make a decision on the subject.

However, Nebraska joins in the request of the United States that the question be left open and not decided in this proceeding.

Respectfully submitted,

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